Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1999

Gloria J. Hooker, Dora E. Hooker
David O. Hooker, Virgil O. Hooker

Petitioner,

v.

AGRIBANK, FCB; TERRY FREDRICKSON, PRESIDENT OF AGRIBANK, FCB; RALPH W. WADDELL & BENTLEY E. STORY

Respondent,

Petition For Writ of Certiorari To The
United States Court of Appeals For the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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and
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20 pp

QUESTIONS PRESENTED

(1.) Will the Honorable USA Supreme Court allow the U.S. Court of Appeals for the 8th Circuit to violate the Rules promulgated by this Court, i.e. FRAP Rule 4(a)(1) & 28 U.S.C. § 2107 (b) that allows 60 days rather than 30 days to do a Notice of Appeal from the U.S.D.C. when said District Court has issued an Order that Agribank, FCB is a Federal Instrumentality or Agency of the Federal government?

(2) Will this Honorable USA Supreme Court exercise its Judicial Power and Supervisory Rule making Power set forth under the USA Constitution, Article III, § 1, § 2; 28 U.S.C. § 2072 (a); and U.S. Supreme Court Rule 10(a) to cause the U.S. Circuit Court of Appeals for the 8th Circuit to conform to this Court's Rule making and Supervisory power set forth in question number one herein that allows all parties 60 days to do a Notice of Appeal when the U.S.D.C. has issued an Order that a Party, i.e. Agribank is a Federal Instrumentality or Agency of the Federal Government?

(3) Will this Honorable USA Supreme Court determine if Agribank, FCB is a Federal Instrumentality or agency of the Federal Government and if the answer is yes did the Hooker Petitioners herein have 60 days to file or lodge their Notice of Appeal from the U.S.D.C. to the U.S. Court of Appeals for the 8th Circuit?

OPINION BELOW

The published written decision of the United States Court of Appeals For The Eighth Circuit appears in Appendix Page (App.7) of this Petition and said denial of Petitioner's Petition for Rehearing appears in Appendix page (App. 8). The Judgment of the United States District Court is set forth in (App. 1). The Order of the United States District Court is set forth in (App. 2) and the Petition for Rehear to Reconsider and Set Aside Previous Order and Judgment is set forth in Appendix Page (App. 5).

JURISDICTION

Jurisdiction is conferred upon the United States Supreme Court pursuant to the U.S.A. Constitution Article III § 1 and 2; Rules of the Supreme Court of the United States Rule 10 (a); 28 U.S.C. § 1254 (1); U.S. Supreme Court Rule 13.1.

CONSTITUTIONAL PROVISIONS

U.S.A. CONSTITUTION, ARTICLE III, § I:

> "The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish..."

U.S.A. CONSTITUTION, ARTICLE III, § II:

> " The judicial Power shall extend to all Cases...arising under this Constitution, the Laws of the United States, ... to Controversies to which the United States shall be a Party;..."

U.S.A. CONSTITUTION, ARTICLE VI, §§ 2,3:

> "This Constitution, and the Laws of the United States...shall be the supreme Law of the Land, ...and Judicial Officers ...shall be bound by oath..."

STATEMENT OF THE CASE

Petitioners, Gloria Hooker, et al respectfully request that a Writ of Certiorari issue to review the decision of the United States Court of Appeals For the Eighth Circuit wherein said Court dismissed Gloria Hooker's et al's Appeal thereto on 10-21-98, see Appendix page (App. 7); the Petitioners filed for a Petition For Rehear which was denied on 1-5-99, see Appendix page (App. 8). The United States Court of Appeals For The Eighth Circuit, stated in its Judgment (App. 7) of 10-21-98 that Petitioners appeal was dismissed for lack of jurisdiction as it was untimely. The U.S. District Court dismissed Petitioners RICO complaint by said issuing its Judgment on 5-20-98, see Appendix (App. 1) and its Order on 5-20-98, see Appendix page (App. 2) Petitioners Rehear to the U.S.D.C. was denied on June 8, 1998, see Appendix page (App. 5).

1. This Court should grant this Petition by exercising its Judicial Power (when an agency or Federal Instrumentality is a party) under the USA Constitution, Article III, §§ 1,2 and its Supervisory and Rule Making Power under 28 U.S.C. § 2072 (a) to cause the U.S. Court of Appeals for the 8th Circuit to conform to this Court's Supervisory and Rule Making authority, as Petitioners were denied their substantive and procedural due process that was required of the U.S. Court of Appeals for the 8th Circuit to follow, i.e. its failure to uphold the Rules of Court for the 8th Circuit that were promulgated by this Court.

Petitioners filed their First and Only RICO complaint against Respondents herein in the U.S.D.C. on 3-26-98. The U.S.D.C. issued its Order (App. 2) on 5-20-98 and stated on the second page of said Order that:

> "Agribank is not a foreign corporation required to register in the State of Arkansas as a condition of conducting business because it is a federal instrumentality. See *The Federal Land Bank of Omaha v. Felt*, 368 N.W. 2d 592 (S.D. 1985)."

Thus the U.S.D.C. ruled that one of the Respondent Parties, i.e. Agribank, FCB was a Federal Instrumentality. A Federal Instrumentality, such as Agribank has been ruled to be a Federal Agency, see *Capitol Building & Loan Assn. Et al v. Kansas* (1938) 148 Kansas 446, 83 P. 2d 106-112, at pg. 110-111, quote:

> "An instrumentality is anything used as a means or agency. 32 C.J. 947. Therefore a federal instrumentality is a means or agency used by the federal government. In the law books the terms "federal agency" and "federal instrumentality" are used interchangeably."

Petitioners herein relied upon the U.S.D.C. Order that stated Agribank was a Federal Instrumentality or agency of the federal government. The U.S. Court of Appeals denied Petitioners their

substantive and procedural due process rights under *Woods v. Strickland,* 420 U.S. 308, at p. 322 by its failure to uphold the Rules of Appellate Procedure promulgated by this Court that allow 60 days for a Notice of Appeal to be filed when one of the parties is an agency of the United States, i.e. FRAP Rule 4(a)(1):

> "...but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days after such entry."

The Judiciary Code also provides for 60 days to file a Notice of Appeal from the U.S.D.C. to the appellate court for all parties when the United States or agency is a party pursuant to 28 U.S.C. § 2107 (b):

> "In any such action, suit, or proceeding in which the United States or agency there of is a party, the time as to all parties shall be sixty days from such entry."

In addition to the above Rule violation by the 8th Circuit Court of Appeals, the similar Rules of Court in the Judicial Code was also violated by the appellate court, i.e. Title 28 U.S.C. § 2072 (a):

> "The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts ... and courts of appeals."

The 8th Circuit case of *East v. Crowdus* (1962) 302 F. 2d 645, at pg. 646-647 provides for 60 days to do a notice of appeal when an agency of the government is a party rather than the standard 30 days:

> "***in any action in which The United States or *** agency thereof is a party*** the time for all parties (to appeal therefrom) shall be 60 days from *** (the)

> entry***"... For such reason it is the Commission's view that it is a party to the action and that the same is timely. We agree with the position of the Commission."

The U.S. Court of Appeals in its Judgment of October 21, 1998 (See Appendix p. 7) stated that the Petitioners appeal was to be dismissed for lack of jurisdiction as the appeal was untimely. Yet the Rules promulgated by this Court upon the 8th Circuit Court under the Rules of Appellate procedure allow 60 days rather than 30 days to do a Notice of Appeal when one of the parties is a federal instrumentality or agency of the federal government. Thus the 8th Circuit erred in not allowing these Petitioners herein 60 days rather than 30 days to file their notice of appeal and in so doing violated Petitioners substantive and due process rights under the Rules promulgated by this Court upon the inferior United States Courts.

2. This Court should grant the Petition to exercise its Judicial Power under the *USA CONSTITUTION, Article III,* §§ 1,2 U.S.A. Constitution, to cause the inferior 8th Circuit Court to comply with the Rules of Court promulgated by this Court and with the approval of Congress and exercise its Supervisory Power upon the inferior Court to cause compliance with this Court's Rules as here when an agency or instrumentality of the United States is a party to the action and there is a controversy surrounding the number of days allowed to do a timely Notice of Appeal from the U.S.D.C. to the U.S. Circuit Court of Appeals for the 8th Circuit.

As it was the duty and obligation of the 8th Circuit Court of Appeals to uphold the Rules of Appellate Procedure which allow 60 days to do a Notice of Appeal from the U.S.D.C. to said Circuit Court and to protect Petitioners substantive and procedural due process rights under the Rules as explained in the *Boyd Doctrine:*

> "It is the duty of the Courts to be watchful for the Constitutional Rights of the Citizen against any stealthy encroachments thereon." *Boyd v. U.S.*, 116 US 635 (1886).

The USA Constitution and valid laws of Congress and Rules passed by this Court in pursuance thereof are the Supreme Law of the Land bound upon the 8th Circuit and all judicial officials, see *USA Constitution, Article VI,* §§ 2,3:

> "This Constitution, and the Laws of the United States...shall be the supreme Law of the Land, ...and Judicial Officers ...shall be bound by oath..." and :
>
> "that a law repugnant to the Constitution is void and that Courts as well as other departments are bound by that instrument." *MARBURY v. MADISON,* 5 U.S. 391 (1803).

This Court's Constitutional and Rule making authority and supervisory authority over the Rules of Appellate Procedure are Constitutional providing substantive and procedural due process to the Petitioners and as promulgated are bound upon the 8th Circuit Court of Appeals as:

> "Where Rights secured by the [USA] Constitution are involved there can be no rule making or legislation which would abrogate them, ..." *MIRANDA v. ARIZONA,* 384 U.S. 491 (1966).

The 8th Circuit Court of Appeals erred in not upholding this Court's Rules, i.e. Federal Rules of Appellate Procedure and its failure to obey the Rules promulgated by this Court has violated Petitioners substantive and due process Rights to file their Notice of Appeal within 60 days allowed by the Rules thus calling for this Court to exercise its supervisory Power over its Rule making authority over the 8th Circuit Court.

3. This Court should exercise its Supervisory Power and Rule making Power to determine if the U.S.D.C. properly ruled that Agribank (see Appendix App.2 Herein) was a Federal Instrumentality or agency of the Federal government and if the answer

is yes then the 8th Circuit Court of Appeals Judgment (see Appendix App. 7) lacked jurisdiction as the appeal was untimely is in error pursuant to *FRAP RULE 4(a)* that allows 60 days to do a Notice of Appeal when the United States or Agency thereof is involved and this is to correct a violation of this Court's Rule Making Authority as well as violating Petitioners substantive and procedure due process under this Court's Supervisory Rule Making Power.

THE PROCEEDINGS BELOW

Petitioners appealed the Dismissal of our First and Only R.I.C.O. complaint filed in the U.S.D.C. and said Judgment was issued on 5-20-98 (App. 2) and also appealed the Order of the U.S.D.C. (App. 5) which was also issued on 5-20-98 which stated that Agribank is not a foreign corporation required to register in Arkansas as a condition of conducting business because it is a Federal Instrumentality. A Petition for Rehear to Reconsider and Set Aside Order and Judgment of 5-20-98 was denied by the U.S.D.C. on June 8, 1998, (App. 5).

Petitioners then appealed to the U.S. Circuit Court of Appeals for the 8th Circuit relying upon the Order (App. 7) of the U.S.D.C. which stated Agribank was a Federal Instrumentality or Agency of the Federal Government. *FRAP Rule 4(a)(1)* allows 60 days to file a Notice of Appeal when one of the parties is the United States or an agency thereof. The U.S. Court of Appeals erred in not upholding the applicable Judiciary Codes, statutes, and Federal Appellate Rules of Court by dismissing Petitioners Notice of Appeal for lack of Jurisdiction as being untimely (App. 7) when Petitioners had 60 days rather than 30 days to file their Notice of Appeal when a Federal Instrumentality or Agency of the United States is a party to the action, i.e. Agribank. A Petition to Rehear was filed and considered by 8th

Circuit and denied on January 5, 1999 (App.8). Petitioners Writ of Certiorari was then filed with this Court as required by U.S. Supreme Court Rules, Rule 13.

The U.S. Court of Appeals for the 8th Circuit had a duty and obligation to uphold the Rules of Appellate Procedure not only to this Court who promulgated said Rules, but the 8th Circuit in violating the Rules of Court and denying Petitioners the full 60 days to do their Notice of Appeal also violated Petitioners substantive and procedural due process rights under the same said rules which the 8th Circuit had an obligation and duty to comply with said Appellate Rules.

REASON FOR GRANTING WRIT

The Supreme court should grant this Petition to uphold this Court's Rule making authority pursuant to the laws passed by the Congress under *Title 28 U.S.C.* § 2072 and the *USA Constitution,* Article III, § 1-2 regarding this Court's exercise of its Judicial Power to cause the U.S.Court of Appeals for the 8th Circuit to conform to the Rules promulgated by this Court and for this Court to exercise its Supervisory Power over its inferior Courts regarding the Rules this Court has promulgated and bound upon the 8th Circuit and the inferior Courts and in so doing Protect the Petitioners Substantive, Procedural and Due Process Rights under this Court's Rule making Power over the inferior Courts causing the 8th Circuit to conform to this Court's Rules that Petitioners have relied upon in good faith as a guideline to the filing of a timely Notice of Appeal with the 8th Circuit Court of Appeals.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully request this Honorable Court to grant this Petition.

Date: 4-8-99

Respectfully submitted
without prejudice,

Gloria J. Hooker

and

David O. Hooker
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In Propria Persona

Respectfully submitted
without prejudice,

Dora E. Hooker

and

Virgil O. Hooker
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In Propria Persona

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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF ARKANSAS

HELENA DIVISION

FILED

MAY 20, 1998

JAMES W. McCORMACK, CLERK

GLORIA J. HOOKER, DORA E. HOOKER,
DAVID O. HOOKER, VIRGIL O. HOOKER PLAINTIFFS

vs. NO. H-C-98-037

AGRIBANK, FCB; TERRY FREDRICKSON
PRESIDENT OF AGRIBANK, FCB;
RALPH W. WADDELL, BENTLEY E. STORY DEFENDANTS

JUDGMENT

In accordance with the Court's Order entered this date, judgment is hereby entered dismissing in its entirety the complaint of the Plaintiffs files in this case.

ENTERED this 20th day of May, 1998.

/S/James M. Moody
United States District Judge

THIS DOCUMENT ENTERED ON DOCKET SHEET IN COMPLIANCE WITH RULE 58 AND/OR 79(a) FRCP ON 5-21-98
BY /s/ J.Sugg

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF ARKANSAS

HELENA DIVISION

FILED

MAY 20, 1998

JAMES W. McCORMACK, CLERK

GLORIA J. HOOKER, DORA E. HOOKER,
DAVID O. HOOKER, VIRGIL O. HOOKER PLAINTIFFS

vs. NO. H-C-98-037

AGRIBANK, FCB; TERRY FREDRICKSON
PRESIDENT OF AGRIBANK, FCB;
RALPH W. WADDELL, BENTLEY E. STORY DEFENDANTS

ORDER

Pending before the Court are the motions to dismiss filed by defendants AgriBank, FCB ("AgriBank"), Terry Fredrickson, Ralph W. Waddell, and Bentley E. Story.

Plaintiffs' complaint is filed as the result of a state court foreclosure action brought against plaintiffs in state court by AgriBank. This same foreclosure action formed the basis for two prior federal court lawsuits against Judge Story. *See Hooker, et al v. Story,* United States District Court, Eastern District of Arkansas, Helena Division, Case No. H-C-97-116 (dismissed for lack of jurisdiction), and *Hooker, et al v. Story, et al,* United States District Court, Eastern District of Arkansas, Helena Division, Case No. H-C-98-033 (dismissed based upon doctrines of *res judicata* and collateral estoppel).

The instant complaint is a rehash of these previous lawsuits. The plaintiffs have simply rephrased the claims made in the previous lawsuits into RICO claims in the instant lawsuit. Not only re the claims against all defendants barred by the principals of *res judicata* and collateral estoppel, but plaintiffs' have failed to state a claim. Judge Story is entitled to absolute immunity in both his individual and official capacity and AgriBank is immune from liability under RICO. See *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991; *Robinson v. Freeze*, 15 F.3d 107, 109 (8th Cir. 1994); *Kentucky v. Graham*, 473 U.S. 159, 165 (1985); *Wiley v. The Federal Land Bank of Louisville*, 657 F. Supp. 964 (S.D. Ind. 1987); *Hefti v. McGrath*, 784 F. Supp. 1426 (E.D. Mo. 1992).

On its face, plaintiffs' complaint states that the separate defendants Fredrickson and Waddell are agents and employees of AgriBank. A cause of action does not exist for civil conspiracy between a corporation and its agents who are acting within the scope of their employment. See *Morton Buildings of Nebraska, Inc. v. Morton Buildings*, 531 F.2d 910 (8th Cir. 1976); *Landmark Savings & Loan v. Loeb Rhoades, Hornblower & Co.*, 527 F. Supp. 206 (E.D. Mich. 1981).

Plaintiffs' claims made pursuant to 18 U.S.C. § 241 are dismissed. 18 U.S.C. § 241 is a criminal statute and provides for no private civil rights cause of action.

AgriBank is not a foreign corporation required to register in the State of Arkansas as a condition of conducting business because it is a federal instrumentality. See *The Federal Land Bank of Omaha v. Felt*, 368 N.W. 2d 592 (S.D. 1985)

Based on the above, defendants' motions to dismiss (#5 and #3) are granted. Plaintiffs' complaint is dismissed. The Clerk of the Court is directed to make the appropriate docket entries to reflect that all pending motions are now moot.

IT IS SO ORDERED this 20th day of May, 1998.

/S/ James M. Moody
James M. Moody
United States District Judge

THIS DOCUMENT ENTERED ON DOCKET SHEET IN COMPLIANCE WITH RULE 58 AND/OR 79(a) FRCP ON 5-21-98 BY /S/ J.SUGG

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF ARKANSAS

HELENA DIVISION

FILED

JUNE 08, 1998

JAMES W. McCORMACK, CLERK

GLORIA J. HOOKER, DORA E. HOOKER,
DAVID O. HOOKER, VIRGIL O. HOOKER PLAINTIFFS

vs. NO. H-C-98-037

AGRIBANK, FCB; TERRY FREDRICKSON
PRESIDENT OF AGRIBANK, FCB;
RALPH W. WADDELL, BENTLEY E. STORY DEFENDANTS

ORDER

Based upon a review of the record, Plaintiffs' Motion to Reconsider and Set Aside the May 20, 1998 Order and Judgment is denied. (#35)

IT IS SO ORDERED this 8th day of June, 1998.

/S/ James M. Moody
James M. Moody
United States District Judge

THIS DOCUMENT ENTERED ON DOCKET SHEET IN COMPLIANCE WITH RULE 58 AND/OR 79 (a) FRCP ON 6/8/98 BY /S/ K. Phillips

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 98-2910EAH

Gloria J. Hooker; Dora E. Hooker; David Hooker; Virgil O. Hooker,	*	
Appellants	*	Appeal from the United States District Court for the
vs.	*	Eastern District of Arkansas
Agribank FCB; Terry Fredrickson; Ralph W. Waddell; Bentley E. Story	*	
Appellees	*	

JUDGMENT

The court has carefully reviewed the original file of the United States District and orders that this appeal be dismissed for lack of jurisdiction as it is untimely. The motion for sanctions is denied.

October 21, 1998

Order Entered at the Direction of the Court

/s/ Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 98-2910EAH

Dora E. Hooker, et al.,	*	
	*	
Appellants	*	Appeal from the United
	*	States District Court for the
vs.	*	Eastern District of Arkansas
	*	
Agribank FCB; et al.,	*	
	*	
Appellees	*	

Appellant's petition for rehearing has been considered by the and is denied.

January 5, 1999

Order Entered at the Direction of the Court

/s/ Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit